

H.F., ON BEHALF OF MINOR CHILD, D.F., :
PETITIONER, :
V. :
BOARD OF EDUCATION OF THE TOWNSHIP :
OF TEANECK, BERGEN COUNTY, :
RESPONDENT. :
AND : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF TEANECK, BERGEN COUNTY, :
PETITIONER, :
V. :
BOARD OF EDUCATION OF THE BOROUGH :
OF CLIFFSIDE PARK, BERGEN COUNTY :
AND H.F., :
RESPONDENTS. :
_____ :

SYNOPSIS

This consolidated matter stems from petitioner H.F.’s dispute concerning the February 2015 decision of the Interim Executive County Superintendent (ECS) that minor child D.F. is not a “homeless child” pursuant to *N.J.A.C. 6A:17-1.1 et seq.* and the McKinney-Vento Homeless Education Assistance Act, and therefore is not entitled to a continuation of his education in the Teaneck School District (Teaneck). D.F. is currently enrolled in the respondent Teaneck’s school district, but attends school in an out-of-district placement pursuant to his individualized education program (IEP). The ECS also determined that H.F. and D.F. are currently domiciled in the Borough of Cliffside Park, and D.F. is consequently entitled to a free public education from the Cliffside Park Public School District. H.F. contends that D.F. meets the definition of a “homeless child” and should be permitted to continue his education in Teaneck. Teaneck is seeking tuition reimbursement from the Cliffside Park School District (Cliffside), as it contends that D.F. resides in Cliffside Park, and thus Cliffside bears the responsibility to provide D.F. with a free and appropriate education. A Commissioner’s Decision dated December 14, 2015 had consolidated and remanded these matters to the OAL for further proceedings, including rendering the requisite findings of fact to facilitate a determination of whether D.F. is a homeless child under applicable statutes and regulations.

The ALJ found, *inter alia*, that: discovery deadlines in this matter were established in a pre-hearing Order dated March 15, 2016; despite repeated notifications, H.F. failed to provide discovery; an Order compelling H.F. to fully comply with discovery requests was issued on July 12, 2016, indicating that failure to comply would lead to dismissal of the petition; H.F. again failed to comply with the Order. The ALJ concluded that H.F.’s failure to obey the orders for discovery was unreasonable and makes it impossible to determine whether D.F. is in fact a “homeless child”, and H.F. has failed to provide explanation or excuse for his non-compliance. Accordingly, the ALJ granted Cliffside’s motion to dismiss the petition, with prejudice.

Upon review, the Commissioner concurred with the ALJ that the petition submitted by H.F. should be dismissed for failure to comply with the discovery orders. However, there appear to be outstanding issues related to the petition filed by Teaneck against Cliffside and H.F. that must still be resolved at the OAL. Accordingly, that petition shall continue at the OAL with such proceedings as are necessary to bring it to closure.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 20234-15, EDU 99966-15 (CONSOLIDATED)
(EDU 7964-15 ON REMAND)
AGENCY DKT. NOS. 79-4/15, 124-6/15

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The record of this consolidated matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed as have the exceptions filed by H.F. This consolidated matter stems from H.F.’s dispute concerning the February 3, 2015 decision of the Interim Executive County Superintendent (ECS), who concluded: 1) minor child D.F. is not a “homeless child” pursuant to *N.J.A.C. 6A:17-1.1 et seq.* and the McKinney-Vento Homeless Education Assistance Act (McKinney-Vento Act), 42 *U.S.C. §§ 11431 et seq.*; and, therefore 2) D.F. is not entitled to a

continuation of his education in the Teaneck School District (Teaneck).¹ H.F. contends that D.F. does meet the definition of a “homeless child” and, therefore, should be permitted to continue his education in Teaneck. Teaneck is seeking tuition reimbursement and other relief from the Cliffside Park School District (Cliffside) because it maintains that D.F. resides in Cliffside and, as such, Cliffside has the responsibility to provide D.F. with a free and appropriate education. In the Initial Decision, the Administrative Law Judge (ALJ) found that the petition of appeal filed by H.F. should be dismissed for failure to comply with the July 12, 2016 discovery Order (July 2016 Order).

Upon a comprehensive review of the record, the Commissioner is in accord with the ALJ’s determination – for the reasons stated in the Initial Decision – that the petition of appeal filed by H.F. should be dismissed for failure to comply with the July, 2016 Order. H.F. has inexcusably and blatantly failed to comply with requests for documents and interrogatories properly served on him by the parties, as well as various interim orders issued by the ALJs in these two consolidated cases, to the detriment of the legal process.² As was stated by ALJ Scollo, H.F.’s “failure to obey the Tribunal’s July 12, 2016 Order is unreasonable, frustrate[s] the orderly process of the case and makes the desired findings of fact regarding whether D.F. is a ‘homeless child’ impossible to be determine.” (Initial Decision at 5) The Commissioner is not persuaded that the exceptions submitted by the H.F. dictate a different result, as the arguments presented by H.F. did not address his failure to comply with the July 2016 Order; rather, H.F. focused his submission on several alleged conspiracy theories. Despite the dismissal of the petition filed by H.F., there appear to be outstanding issues related to the petition filed by Teaneck against Cliffside and H.F. that still must be resolved at the OAL. Notably, it is not

¹ The ECS further determined that H.F. and D.F. are presently domiciled in the Borough of Cliffside Park.

² The July, 2016 Order expressly provided that if H.F. failed to comply with the discovery requests, his petition would be dismissed.

entirely clear from the record which district D.F. is currently attending school in, if any, or whether tuition reimbursement is appropriate in this case.

Accordingly the petition of appeal filed by H.F. is hereby dismissed. The petition filed by Teaneck against Cliffside and H.F. shall continue at the OAL with such proceedings as the parties and ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 22, 2016

Date of Mailing: December 22, 2016